

**IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF OHIO EASTERN DIVISION**

SETH FLETCHER,	:	Case No. 2:20-cv-1912
	:	
Plaintiff,	:	
	:	
v.	:	Judge Michael H. Watson
	:	
	:	Magistrate Judge Deavers
CORRECTIONAL OFFICER	:	
DUSTIN KNOX, et al.,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANTS TO
PLAINTIFF’S THIRD AMENDED COMPLAINT**

Now come Defendants Knox, Coy, White, Brown, Hester, Varner, Lawhorn, McGuire, Lambert, Mullet, Breyfogle, Wooten, Anderson, Osbon, Alley, Posey, Henshaw, Messer, Payne, Clark, Graves, Rafferty, and Jones (collectively “Defendants”), by and through counsel, and for their answer to Plaintiff Seth Fletcher’s (“Plaintiff”) Third Amended Complaint. (Doc. 52), state as follows:

PRELIMINARY STATEMENT

1. In response to Paragraph 1 of the Third Amended Complaint, Defendants aver that this Paragraph does not contain factual allegations that require a response, but rather contains legal conclusions. If this Court should determine that this Paragraph contains factual allegations, Defendants deny.
2. In response to Paragraph 2 of the Third Amended Complaint, Defendants admit that the events set forth in the Third Amended Complaint occurred between April 3, 2020 and April 4, 2020. Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.
3. In response to Paragraph 3 of the Third Amended Complaint, Defendants admit that Plaintiff was incarcerated in the Chillicothe Correctional Institution (“CCI”). Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted

herein.

4. In response to Paragraph 4 of the Third Amended Complaint, Defendants deny.
5. In response to Paragraph 5 of the Third Amended Complaint, Defendants deny.
6. In response to Paragraph 6 of the Third Amended Complaint, Defendants deny.
7. In response to Paragraph 7 of the Third Amended Complaint, Defendants deny.
8. In response to Paragraph 8 of the Third Amended Complaint, Defendants deny.
9. In response to Paragraph 9 of the Third Amended Complaint, Defendants deny.
10. In response to Paragraph 10 of the Third Amended Complaint, Defendants deny.
11. In response to Paragraph 11 of the Third Amended Complaint, Defendants aver that this Paragraph does not contain factual allegations that require a response. If this Court should determine that this Paragraph contains factual allegations, Defendants deny.

PRELIMINARY ALLEGATIONS

12. In response to Paragraph 12 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
13. In response to Paragraph 13 of the Third Amended Complaint, Defendants aver that this Paragraph does not contain factual allegations that require a response, but rather legal conclusions. If this Court should determine that this Paragraph contains factual allegations, Defendants deny.
14. In response to Paragraph 14 of the Third Amended Complaint, Defendants deny.
15. In response to Paragraph 15 of the Third Amended Complaint, Defendants deny.
16. In response to Paragraph 16 of the Third Amended Complaint, Defendants deny.
17. In response to Paragraph 17 of the Third Amended Complaint, Defendants deny.
18. In response to Paragraph 18 of the Third Amended Complaint, Defendants deny.
19. In response to Paragraph 19 of the Third Amended Complaint, Defendants deny.
20. In response to Paragraph 20 of the Third Amended Complaint, Defendants deny.
21. In response to Paragraph 21 of the Third Amended Complaint, Defendants deny.

JURISDICTION AND VENUE

22. In response to Paragraph 22 of the Third Amended Complaint, Defendants incorporate

their prior admissions, denials and averments.

23. In response to Paragraph 23 of the Third Amended Complaint, Defendants admit in part and deny in part. Defendants admit that this Court has jurisdiction over the federal law Eighth Amendment and 42 U.S.C. § 1983 claims. Defendants deny that this Court has jurisdiction over the state law claims. Defendants deny any all remaining allegations contained in this Paragraph that are not specifically admitted herein.
24. In response to Paragraph 24 of the Third Amended Complaint, Defendants aver that this Paragraph does not contain factual allegations that require a response. If this Court should determine that this Paragraph contains factual allegations, Defendants deny.
25. In response to Paragraph 25 of the Third Amended Complaint, Defendants admit that the federal law claims are properly before this judicial district. Defendants deny that the state law claims are properly before this district. Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.

PARTIES

26. In response to Paragraph 26 of the Third Amended Complaint, Defendants admit that Plaintiff is Seth Fletcher. Defendants admit that Plaintiff was a patient at The Ohio State University Medical Center at the time the initial Complaint in this matter was filed. Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.
27. In response to Paragraph 27 of the Third Amended Complaint, Defendants aver that this Paragraph does not contain factual allegations that require a response, but rather legal conclusions. If this Court should determine that this Paragraph contains factual allegations, Defendants deny.
28. In response to Paragraph 28 of the Third Amended Complaint, Defendants deny.
29. In response to Paragraph 29 of the Third Amended Complaint, Defendants admit that at all times relevant to the complaint they were employed by the Ohio Department of Rehabilitation and Correction (“DRC”) as employees working at CCI. Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.
30. In response to Paragraph 30 of the Third Amended Complaint, Defendants admit that at all times relevant to the complaint they were employed by DRC as employees working at CCI. Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.

GENERAL FACTUAL ALLEGATIONS

31. In response to Paragraph 31 of the Third Amended Complaint, Defendants admit.
32. In response to Paragraph 32 of the Third Amended Complaint, Defendants admit that Plaintiff was incarcerated at CCI at the time of the allegations set forth in the Complaint.

Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.

33. In response to Paragraph 33 of the Third Amended Complaint, Defendants deny.
34. In response to Paragraph 34 of the Third Amended Complaint, Defendants deny.
35. In response to Paragraph 35 of the Third Amended Complaint, Defendants deny.
36. In response to Paragraph 36 of the Third Amended Complaint, Defendants deny.
37. In response to Paragraph 37 of the Third Amended Complaint, Defendants deny.
38. In response to Paragraph 38 of the Third Amended Complaint, Defendants deny.
39. In response to Paragraph 39 of the Third Amended Complaint, Defendants deny.
40. In response to Paragraph 40 of the Third Amended Complaint, Defendants deny.
41. In response to Paragraph 41 of the Third Amended Complaint, Defendants deny.
42. In response to Paragraph 42 of the Third Amended Complaint, Defendants deny.
43. In response to Paragraph 43 of the Third Amended Complaint, Defendants deny.
44. In response to Paragraph 44 of the Third Amended Complaint, Defendants deny.
45. In response to Paragraph 45 of the Third Amended Complaint, Defendants deny.
46. In response to Paragraph 46 of the Third Amended Complaint, Defendants deny.
47. In response to Paragraph 47 of the Third Amended Complaint, Defendants deny,
48. In response to Paragraph 48 of the Third Amended Complaint, Defendants deny.
49. In response to Paragraph 49 of the Third Amended Complaint, Defendants deny.
50. In response to Paragraph 50 of the Third Amended Complaint, Defendants deny.
51. In response to Paragraph 51 of the Third Amended Complaint, Defendants deny,
52. In response to Paragraph 52 of the Third Amended Complaint, Defendants deny.
53. In response to Paragraph 53 of the Third Amended Complaint, Defendants deny.
54. In response to Paragraph 54 of the Third Amended Complaint, Defendants deny.
55. In response to Paragraph 55 of the Third Amended Complaint, Defendants deny.
56. In response to Paragraph 56 of the Third Amended Complaint, Defendants deny.

57. In response to Paragraph 57 of the Third Amended Complaint, Defendants deny.
58. In response to Paragraph 58 of the Third Amended Complaint, Defendants deny.
59. In response to Paragraph 59 of the Third Amended Complaint, Defendants deny.
60. In response to Paragraph 60 of the Third Amended Complaint, Defendants deny.
61. In response to Paragraph 61 of the Third Amended Complaint, Defendants deny.
62. In response to Paragraph 62 of the Third Amended Complaint, Defendants deny.
63. In response to Paragraph 63 of the Third Amended Complaint, Defendants deny.
64. In response to Paragraph 64 of the Third Amended Complaint, Defendants deny.
65. In response to Paragraph 65 of the Third Amended Complaint, Defendants deny.
66. In response to Paragraph 66 of the Third Amended Complaint, Defendants deny.
67. In response to Paragraph 67 of the Third Amended Complaint, Defendants deny.
68. In response to Paragraph 68 of the Third Amended Complaint, Defendants deny.
69. In response to Paragraph 69 of the Third Amended Complaint, Defendants deny.
70. In response to Paragraph 70 of the Third Amended Complaint, Defendants deny.
71. In response to Paragraph 71 of the Third Amended Complaint, Defendants deny.
72. In response to Paragraph 72 of the Third Amended Complaint, Defendants deny.
73. In response to Paragraph 73 of the Third Amended Complaint, Defendants deny.
74. In response to Paragraph 74 of the Third Amended Complaint, Defendants deny.
75. In response to Paragraph 75 of the Third Amended Complaint, Defendants deny.
76. In response to Paragraph 76 of the Third Amended Complaint, Defendants deny.
77. In response to Paragraph 77 of the Third Amended Complaint, Defendants deny.
78. In response to Paragraph 78 of the Third Amended Complaint, Defendants deny.
79. In response to Paragraph 79 of the Third Amended Complaint, Defendants deny.
80. In response to Paragraph 80 of the Third Amended Complaint, Defendants deny.
81. In response to Paragraph 81 of the Third Amended Complaint, Defendants deny.

82. In response to Paragraph 82 of the Third Amended Complaint, Defendants aver that Plaintiff was transported to the hospital from CCI. Defendants deny all remaining allegations contained in this Paragraph that are not specifically admitted herein.

83. In response to Paragraph 83 of the Third Amended Complaint, Defendants deny.

FIRST CLAIM OF RELIEF

84. In response to Paragraph 84 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.

85. In response to Paragraph 85 of the Third Amended Complaint, Defendants deny.

86. In response to Paragraph 86 of the Third Amended Complaint, Defendants deny.

87. In response to Paragraph 87 of the Third Amended Complaint, Defendants deny.

SECOND CLAIM FOR RELIEF

88. In response to Paragraph 88 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.

89. In response to Paragraph 89 of the Third Amended Complaint, Defendants deny.

90. In response to Paragraph 90 of the Third Amended Complaint, Defendants deny.

91. In response to Paragraph 91 of the Third Amended Complaint, Defendants deny.

92. In response to Paragraph 92 of the Third Amended Complaint, Defendants deny.

93. In response to Paragraph 93 of the Third Amended Complaint, Defendants deny.

94. In response to Paragraph 94 of the Third Amended Complaint, Defendants deny.

95. In response to Paragraph 95 of the Third Amended Complaint, Defendants deny.

96. In response to Paragraph 96 of the Third Amended Complaint, Defendants deny.

97. In response to Paragraph 97 of the Third Amended Complaint, Defendants deny.

THIRD CLAIM FOR RELIEF

98. In response to Paragraph 98 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.

99. In response to Paragraph 99 of the Third Amended Complaint, Defendants deny.

100. In response to Paragraph 100 of the Third Amended Complaint, Defendants deny.

- 101. In response to Paragraph 101 of the Third Amended Complaint, Defendants deny.
- 102. In response to Paragraph 102 of the Third Amended Complaint, Defendants deny.
- 103. In response to Paragraph 103 of the Third Amended Complaint, Defendants deny.
- 104. In response to Paragraph 104 of the Third Amended Complaint, Defendants deny.

FOURTH CLAIM FOR RELIEF

- 105. In response to Paragraph 105 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
- 106. In response to Paragraph 106 of the Third Amended Complaint, Defendants deny.
- 107. In response to Paragraph 107 of the Third Amended Complaint, Defendants deny.
- 108. In response to Paragraph 108 of the Third Amended Complaint, Defendants deny.
- 109. In response to Paragraph 109 of the Third Amended Complaint, Defendants deny.
- 110. In response to Paragraph 110 of the Third Amended Complaint, Defendants deny.
- 111. In response to Paragraph 111 of the Third Amended Complaint, Defendants deny.

FIFTH CLAIM FOR RELIEF

- 112. In response to Paragraph 112 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
- 113. In response to Paragraph 113 of the Third Amended Complaint, Defendants deny.
- 114. In response to Paragraph 114 of the Third Amended Complaint, Defendants deny.
- 115. In response to Paragraph 115 of the Third Amended Complaint, Defendants deny.
- 116. In response to Paragraph 116 of the Third Amended Complaint, Defendants deny.
- 117. In response to Paragraph 117 of the Third Amended Complaint, Defendants deny.
- 118. In response to Paragraph 118 of the Third Amended Complaint, Defendants deny.

SIXTH CLAIM FOR RELIEF

- 119. In response to Paragraph 119 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
- 120. In response to Paragraph 120 of the Third Amended Complaint, Defendants deny.

- 121. In response to Paragraph 121 of the Third Amended Complaint, Defendants deny.
- 122. In response to Paragraph 122 of the Third Amended Complaint, Defendants deny.
- 123. In response to Paragraph 123 of the Third Amended Complaint, Defendants deny.
- 124. In response to Paragraph 124 of the Third Amended Complaint, Defendants deny.
- 125. In response to Paragraph 125 of the Third Amended Complaint, Defendants deny.

SEVENTH CLAIM FOR RELIEF

- 126. In response to Paragraph 126 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
- 127. In response to Paragraph 127 of the Third Amended Complaint, Defendants deny.
- 128. In response to Paragraph 128 of the Third Amended Complaint, Defendants deny.
- 129. In response to Paragraph 129 of the Third Amended Complaint, Defendants deny.
- 130. In response to Paragraph 130 of the Third Amended Complaint, Defendants deny.
- 131. In response to Paragraph 131 of the Third Amended Complaint, Defendants deny.
- 132. In response to Paragraph 132 of the Third Amended Complaint, Defendants deny.

EIGHTH CLAIM FOR RELIEF

- 133. In response to Paragraph 133 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
- 134. In response to Paragraph 134 of the Third Amended Complaint, Defendants deny.
- 135. In response to Paragraph 135 of the Third Amended Complaint, Defendants deny.
- 136. In response to Paragraph 136 and all subparagraphs of Paragraph 136 of the Third Amended Complaint, Defendants deny.
- 137. In response to Paragraph 137 of the Third Amended Complaint, Defendants deny.
- 138. In response to Paragraph 138 of the Third Amended Complaint, Defendants deny.
- 139. In response to Paragraph 139 of the Third Amended Complaint, Defendants deny.
- 140. In response to Paragraph 140 of the Third Amended Complaint, Defendants deny.
- 141. In response to Paragraph 141 of the Third Amended Complaint, Defendants deny.

NINTH CLAIM FOR RELIEF

- 142. In response to Paragraph 142 of the Third Amended Complaint, Defendants incorporate their prior admissions, denials and averments.
- 143. In response to Paragraph 143 of the Third Amended Complaint, Defendants deny.
- 144. In response to Paragraph 144 of the Third Amended Complaint, Defendants deny.
- 145. In response to Paragraph 145 of the Third Amended Complaint, Defendants deny.
- 146. In response to Paragraph 146 of the Third Amended Complaint, Defendants deny.
- 147. In response to Paragraph 147 of the Third Amended Complaint, Defendants deny.
- 148. In response to Paragraph 148 of the Third Amended Complaint, Defendants deny.
- 149. Defendants deny any and all factual allegations contained within the Third Amended Complaint that are not specifically and expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

- A. The Third Amended Complaint fails to state a claim for which relief may be granted.
- B. The Third Amended Complaint fails to set forth the deprivation of a constitutional right.
- C. The Prison Litigation Reform Act (“PLRA”) of 1995, as set forth in 42 U.S.C. § 1997e, limits Plaintiffs’ requested relief, to include, but not limited to, any request for attorney fees.
- D. Plaintiff’s claims are barred, in whole or in part, by supervening, intervening acts and /or omissions not under the control of Defendants, to include, but not limited to, Plaintiff’s own actions or his failure to act, in either whole or in part.
- E. Plaintiff is barred from any equitable relief due to the application of the unclean hands doctrine.
- F. Defendants are entitled to immunity, to include but not limited to Eleventh Amendment Immunity, Ohio’s Sovereign Immunity, as well as judicial immunity and qualified immunity.
- G. Defendants, in their individual capacities, are protected by qualified immunity and assert that they complied in good faith with the law at all relevant times.
- H. To the extent the Third Amended Complaint is construed as seeking damages for mental anguish, pain, or suffering, or any other emotional or mental injury, such claims must be dismissed due to failure to demonstrate a prior showing of a sufficiently serious physical injury caused, or proximately caused by Defendants, pursuant to 42 U.S.C. § 1997e(e).

- I. 42 U.S.C. § 1997e(a) demands dismissal of the Third Amended Complaint because Plaintiff failed to exhaust available administrative remedies with regard to all claims raised in the Complaint.
- J. To the extent that Plaintiff's claims are brought against Defendants in their official capacities for money damages, this Court lack subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), Defendants are not deemed to be "persons" capable of being sued under 42 U.S.C. § 1983, and are immune from such relief pursuant to 42 U.S.C. § 1997e(c) and/or the Eleventh Amendment.
- K. Plaintiff's claims are barred by the doctrine of contributory negligence, comparative negligence, and/or assumption of the risk.
- L. Plaintiff's claims are barred by the doctrine of privilege and/or self-defense of person and/or defense of others, pursuant to state and/or federal laws.
- M. Plaintiff's claims must fail due to the absence of *respondeat superior*.
- N. Defendants reserve the right to later assert affirmative defenses that become apparent by further discovery.

JURY TRIAL DEMAND

Defendants hereby formally demand a trial by a jury on all claims that may be permitted to proceed before this Court.

CONCLUSION

WHEREFORE, Defendants, having fully responded to the allegations contained in Plaintiff's Third Amended Complaint, pray that this action be dismissed with prejudice, and that they be granted their costs and other relief as may be appropriate.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Charles A. Schneider

CHARLES A. SCHNEIDER (0005821)*

**Lead Trial Attorney*

KELLY BROGAN (0093891)
MARGARET S. MOORE (0096813)
Assistant Attorneys General
Criminal Justice Section
30 East Broad Street, 23rd Floor
Columbus, Ohio 43215
T: (614) 728-7055; F: (614) 728-9327
Charles.Schneider@ohioago.gov
Kelly.Brogan@ohioago.gov
Margaret.Moore@ohioago.gov

ANNE BERRY STRAIT (0012256)
Assistant Attorney General
Court of Claims Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
T: (614) 466-7447; F: (866) 490-2824
Anne.Strait@OhioAGO.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Answer of Defendants to the Third Amended Complaint* has been forwarded via the court's electronic filing to all parties of record this 3rd day of May, 2021.

/s/ Margaret S. Moore

MARGARET S. MOORE (0096813)
Assistant Attorney General